

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

JASON FOSTER

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No. 07 CR 772

Judge Virginia M. Kendall

**GOVERNMENT'S RESPONSE TO DEFENDANT'S REPLY TO NOTICE OF PENALTY
OF ENHANCEMENT UNDER 21 U.S.C. § 851**

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois hereby responds to Defendant's Reply to Government's Notice of Penalty Enhancement Under 21 U.S.C. § 851 by stating that defendant's reply is now moot. On March 24, 2008, the government moved to withdraw its Notice of Penalty Enhancement under 21 U.S.C. § 851. The government further states as follows:

1. On December 18, 2007, Defendant was charged in a two count indictment charging defendant with knowingly and intentionally distributing over 5 grams of crack cocaine (Count One) and knowingly and intentionally distributing over 50 grams of crack cocaine (Count Two), both in violation of 21 U.S.C. § 841(a)(1).

2. On January 7, 2008, the government filed its notice of intention to seek statutory enhanced penalties, pursuant to 21 U.S.C. § 851. The government stated that it may rely on two prior convictions in seeking a statutory enhancement.

3. On February 21, 2008, counsel for defendant filed a response to the government's notice. Defendant argues that the two prior convictions listed by the government are factually related and thus actually constitute only one prior conviction for purposes of a 21 U.S.C. § 851 enhancement. This Court set a reply date for the government for today, March 19, 2008. The government then asked for an extension of time within which to complete its investigation regarding defendant's representations.

4. On March 24, 2008, the government moved to withdraw its Notice under 21 U.S.C. § 851 as the government does not intend to seek an enhanced penalty in this case. Accordingly, defendant's reply is rendered moot.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

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CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that the following document:

Government's Response to Defendant's Reply to Notice of Penalty of Enhancement under 21 U.S.C. § 851

was served on March 24, 2008, in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's ECF system as to ECF filers, if any.

/s/ Bethany K. Biesenthal

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